

STATE OF NEW YORK

10866

IN ASSEMBLY

July 24, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Finch, Barclay, Palmesano, Ashby, Blankenbush, Brabenec, Byrne, Byrnes, Crouch, DeStefano, DiPietro, Fitzpatrick, Friend, Garbarino, Giglio, Goodell, Hawley, Johns, Kolb, Lalor, Lawrence, LiPetri, Malliotakis, Manktelow, McDonough, Mikulin, B. Miller, M. L. Miller, Montesano, Morinello, Norris, Palumbo, Ra, Reilly, Salka, Schmitt, Smith, Smullen, Stec, Tague, Walczyk, Walsh) -- read once and referred to the Committee on Alcoholism and Drug Abuse

AN ACT to amend the mental hygiene law, in relation to the establishment and operations of a dedicated opioid rehabilitation facility and the personal needs allowance for residents of a dedicated opioid rehabilitation facility; to amend the criminal procedure law, in relation to the diversion of certain defendants to a mandatory opioid rehabilitation facility; and to amend the correction law, in relation to the establishment of a dedicated opioid rehabilitation facility and the provision of corrections officers to such facilities

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as "the Jessica
2 Nicole Gentile law".

3 § 2. Legislative intent. (a) Opioid addiction is a chronic disease
4 that can cause major health, social and economic problems. Opioids are a
5 class of drugs that act in the nervous system to produce feelings of
6 pleasure and pain relief. Some opioids are legally prescribed by health
7 care providers to manage severe and chronic pain. Commonly prescribed
8 opioids include oxycodone, fentanyl, buprenorphine, methadone, oxymor-
9 phone, hydrocodone, codeine, and morphine. Other opioids, such as
10 heroin, are illegal drugs of abuse.

11 Opioid addiction is characterized by a powerful, compulsive urge to
12 use opioid drugs, even if or when they are no longer required medically.
13 Opioids have a high potential for causing addiction in some people, even
14 when the medications are prescribed appropriately and taken as directed.
15 Many prescription opioids are misused or diverted to others. Individ-
16 uals who become addicted may prioritize getting and using these drugs

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 over other activities in their lives, often negatively impacting their
2 professional and personal relationships. It is unknown why some people
3 are more likely to become addicted than others.

4 Opioids change the chemistry of the brain and lead to drug tolerance,
5 which means that over time the dose needs to be increased to achieve the
6 same effect. Taking opioids over a long period of time produces depend-
7 ence, such that when people stop taking the drug, they have physical and
8 psychological symptoms of withdrawal (such as muscle cramping, diarrhea
9 and anxiety). Dependence is not the same thing as addiction; although
10 everyone who takes opioids for an extended period will become dependent,
11 only a small percentage also experience the compulsive, continuing need
12 for the drug that characterizes addiction.

13 Opioid addiction can cause life-threatening health problems, including
14 the risk of overdose. Overdose occurs when high doses of opioids cause
15 breathing to slow or stop, leading to unconsciousness and death if the
16 overdose is not treated immediately. Both legal and illegal opioids
17 carry a risk of overdose if a person takes too much of the drug, or if
18 opioids are combined with other drugs (particularly tranquilizers called
19 benzodiazepines).

20 In many cases, addiction requires a gateway drug. Gateway drugs are
21 substances that, when consumed, give way to harder, more dangerous
22 drugs. These milder substances, such as nicotine or alcohol, are
23 believed to open the door to the use of drugs such as meth, heroin and
24 cocaine, which can lead to addiction. Opioid abuse does not always
25 entail prior use of a gateway drug as opioids themselves are gateway
26 drugs.

27 Opioid abuse, along with the resulting overdose deaths, has risen to
28 the point of being one of the worst drug epidemics in the history of the
29 United States. According to the Centers for Disease Control and
30 Prevention (CDC) more than 750,000 people have died since 1999 from a
31 drug overdose. Two out of three drug overdose deaths in 2018 involved an
32 opioid. The CDC reports that opioids were involved in more than 47,600
33 overdose deaths in 2017 alone.

34 Rarely do people abusing or addicted to opioids seek treatment for
35 their addiction problems until they run into problems with the law.
36 According to research, opioid abusers do not believe that quitting is
37 even an option, as the addiction is so powerful, they cannot even
38 comprehend being free of it. For the most part, there are no volunteers
39 in current opioid recovery programs, just forced participants ordered
40 into the programs by the court. This makes the legal system, in partic-
41 ular the drug courts, an important part of this societal mental health
42 crisis.

43 (b) New York state leads the nation in the expansion and implementa-
44 tion of drug courts into daily court operations.

45 Drug courts use a collaborative approach to treatment involving
46 defense attorneys, prosecutors, treatment and education providers, and
47 law enforcement officials. Article 216 of the criminal procedure law
48 authorizes a criminal drug court to divert eligible felony offenders
49 into substance abuse treatment programs in lieu of incarceration in a
50 correctional facility. Non-violent offenders voluntarily enter the
51 program in which rules are clearly defined and a contract between the
52 offender, attorneys, the district attorney and the court is signed.

53 There are 141 drug courts in operation statewide. Defendants facing
54 certain felony or misdemeanor charges where drug addiction is a compo-
55 nent of their offense may be eligible to participate in a criminal drug
56 treatment court program. Those who successfully complete their drug

1 treatment court program may have their charges dismissed or reduced or
2 may receive a reduction in their sentence.

3 Young adult drug treatment courts are operational in several of the
4 criminal courts. These courts target defendants in the 16- to
5 21-year-old population.

6 In 2017, New York state opened the first opioid court in the nation.
7 The Buffalo Opioid Intervention Court provides immediate intervention,
8 treatment and medication for defendants who screen positive for opioids
9 and who staff feel are at risk of overdose or addiction. The University
10 of Buffalo School of Family Medicine (UBFM), a grant partner, contrib-
11 utes key staff positions. Those staff members provide daily case manage-
12 ment for program participants and link those participants to medication
13 assisted treatment (MAT) within 48 hours of arraignment when indicated.

14 In the Bronx, which has one of the highest number of opioid-related
15 overdoses and deaths in the state, the Bronx Opioid Avoidance and Recov-
16 ery Court is a collaboration between the court, prosecutors, and the
17 defense bar. Defendants charged with misdemeanor drug possession are
18 diverted to existing treatment services. Because only misdemeanor offen-
19 ders are eligible, charges are generally dismissed upon completion of
20 the recommended intervention.

21 Results from these diversion treatment programs have been positive. A
22 2003 study of six drug courts conducted by the Center for Court Inno-
23 vation demonstrated that the rates at which drug court graduates re-of-
24 fend were significantly reduced as compared to rates at which incarcer-
25 ated individuals re-offended. Notwithstanding the foregoing, an
26 additional treatment option is required.

27 Unfortunately, a percentage of defendants passing through drug courts
28 and their treatment options have a difficult time remaining free of
29 drugs after completing treatment, particularly those individuals who
30 abuse or are addicted to opioids. As the American Medical Association
31 has declared substance abuse a disease, it can be assumed some people
32 are sicker than others. After completing treatment in a rehabilitation
33 program and returning into society, usually in the same town where their
34 drug contacts were, these individuals have a difficult time remaining
35 drug-free.

36 The current model of drug court will tolerate relapse after relapse,
37 to a certain point. When judges get weary of these chronically addicted
38 defendants, they place them directly into the criminal system of the
39 court to serve prison time. There is no middle ground between "drug
40 court" rehabilitation referral and "criminal court system" carcera-
41 tion. Once in the criminal court system, each opioid abuser or addict
42 will cost the state approximately \$65,000 to \$80,000 a year (the average
43 cost of maintaining a prisoner). The recidivism rate for those sentenced
44 to prison is approximately 45%.

45 The cost of maintaining long-term or even lifelong inmates in prison
46 and the destruction of many lives could be reduced by adding an option
47 to the system between drug court and the criminal system: a mandatory
48 state-run opioid rehabilitation center, where people could voluntarily
49 sign away their right to leave for one year or longer in exchange for
50 not being put into the prison system. In other words, a lock-up treat-
51 ment center.

52 This approach stands in contrast to current rehabilitation referral
53 measures which entail outpatient treatment or residential treatment for
54 limited periods of time. For some individuals, rehabilitation options
55 are determined by their insurance plan, not their actual needs.

1 A state-run residential rehabilitation center would provide drug court
2 judges with another alternative to criminal court. It would provide
3 ongoing treatment over an extended period of time; participants would
4 not be released until health care providers believed they could success-
5 fully refrain from drug use. Drug court judges would have another alter-
6 native to criminal court. They would no longer have to tolerate relapse
7 after relapse. Participants would benefit from an environment where
8 recovery would be easier for them.

9 (c) The legislature finds and declares that it is in the best interest
10 of the people of the state of New York to reduce the burden on the drug
11 courts, the cost to the state and the amount of time needed by the judi-
12 cial system to handle drug cases by referring opioid-abusing or opioid-
13 addicted criminal defendants to a facility under the supervision of the
14 Office of Addiction Services and Supports, while at the same time
15 providing desperately needed treatment to such individuals. As opposed
16 to incarceration, a mental health response is more likely to reduce
17 recidivism, saving both lives and taxpayer money.

18 § 3. The mental hygiene law is amended by adding a new article 23 to
19 read as follows:

20 ARTICLE 23

21 DEDICATED OPIOID REHABILITATION TREATMENT FACILITY

22 Section 23.01 Definitions.

23 23.02 Establishment of a dedicated opioid rehabilitation facili- 24 ty.

25 23.03 Dedicated opioid rehabilitation facility.

26 23.04 Admission to a dedicated opioid rehabilitation treatment 27 facility.

28 23.05 Referral to a dedicated opioid rehabilitation facility by 29 an opioid court.

30 23.06 Sentencing agreement.

31 23.07 Minors.

32 23.08 Discharge from a dedicated opioid rehabilitation facility.

33 23.09 Treatment following discharge from a dedicated opioid 34 rehabilitation facility.

35 23.10 Court appearances.

36 23.11 Records.

37 23.12 Limitations.

38 23.13 Study.

39 § 23.01 Definitions.

40 As used in this article:

41 1. "commissioner" means the commissioner of the office of addiction
42 services and supports;

43 2. "correctional institution" includes state, county and federal
44 institutions or facilities of corrections and juvenile facilities;

45 3. "court" or "drug court" means a state drug court, a young adult
46 drug treatment court, the Buffalo Opioid Intervention Court and the
47 Bronx Opioid Avoidance and Recovery Court;

48 4. "dedicated opioid rehabilitation facility" or "facility" means a
49 dedicated opioid rehabilitation facility established pursuant to section
50 23.02 of this article;

51 5. "defendant" means an individual referred to a dedicated opioid
52 rehabilitation facility pursuant to an agreement entered into in drug
53 court;

54 6. "eligible defendant" means a defendant who qualifies as an eligible
55 defendant as defined in section 216.00 of the criminal procedure law;

1 7. "licensed health care provider" means an individual licensed pursu-
2 ant to title eight of the education law;

3 8. "minor" means a defendant at least sixteen years of age, but under
4 eighteen years of age, but does not include a person who is the parent
5 of a child or has married or who is emancipated; and

6 9. "office" means the office of addiction services and supports.

7 § 23.02 Establishment of a dedicated opioid rehabilitation facility.

8 1. The commissioner of addiction services and supports, in consulta-
9 tion with the commissioner of health, the commissioner of corrections
10 and community supervision, the chief administrator of the courts and the
11 commissioner of the office of general services, shall establish a dedi-
12 cated opioid rehabilitation facility for the purpose of providing long-
13 term residential treatment of opioid abusing or addicted defendants
14 referred to such facility from a drug court.

15 2. Such facility shall be operated and supervised by the office of
16 addiction services and supports, with support from the department of
17 corrections and community supervision.

18 3. Such facility shall be a secured (locked) facility established for
19 the purpose of providing long-term residential treatment of opioid abuse
20 and opioid addiction as an alternative to incarceration.

21 4. In selecting the location of the facility, preference shall be
22 given to a site near the Buffalo Opioid Intervention Court or the Bronx
23 Opioid Avoidance and Recovery Court and to facilities previously
24 utilized as part of the corrections system or the mental health system.
25 Consideration shall be given to the mental health resources available in
26 the area of the site.

27 § 23.03 Dedicated opioid rehabilitation facility.

28 1. A dedicated opioid rehabilitation treatment facility shall be a
29 secure (locked) facility.

30 2. Staff at the facility shall include, but not be limited to:

31 (a) qualified and licensed health care providers, counselors and
32 support staff as determined by the office;

33 (b) administrative, maintenance, custodial and other staff as deter-
34 mined by the office; and

35 (c) corrections officers, in a number as agreed upon by the office and
36 the department of corrections and community supervision sufficient to
37 maintain order and remove the temptation of defendants residing at the
38 facility to flee.

39 3. Living quarters for defendants referred to the facility shall be
40 arranged in dormitories housing between four and six defendants.

41 (a) Dormitory facilities for men and women admitted to the facility
42 shall be maintained separately.

43 (b) Dormitory facilities for minors shall be maintained separately
44 from dormitory facilities for adults.

45 § 23.04 Admission to a dedicated opioid rehabilitation treatment facili-
46 ty.

47 1. Admission to a dedicated opioid rehabilitation treatment facility
48 shall be allowed only upon referral by a drug court to the facility
49 pursuant to the provisions of a sentencing agreement as provided in
50 section 23.06 of this article.

51 2. Admission shall be made solely for the purpose of long-term,
52 secured residential treatment of opioid abuse and addiction.

53 3. A defendant who has been charged with a class A or class B felony
54 or of a violent felony offense as described in section 70.02 of the
55 penal law shall not be a candidate for admission to a dedicated opioid
56 rehabilitation facility.

1 4. A defendant shall not be a candidate for admission to the facility
2 if, in the discretion of the sentencing court, such person is deemed to
3 be a danger to himself or herself or to other people, or to be a high
4 flight risk.

5 5. A minor who meets the criteria for admission as described in this
6 section may be admitted to the facility, subject to the provisions of
7 section 23.07 of this article.

8 6. A dedicated opioid rehabilitation facility shall have the right to
9 refuse admission to a defendant whom the facility does not deem a suit-
10 able candidate for successful completion of the programs offered by the
11 facility.

12 § 23.05 Referral to a dedicated opioid rehabilitation facility by an
13 opioid court.

14 1. In his or her discretion, and in accordance with the provisions of
15 section 216.05 of the criminal procedure law and of this article, a
16 judge of a drug court may order a defendant to enter treatment at a
17 dedicated opioid rehabilitation facility. Any such order shall be
18 dependent upon approval by the court of a sentencing agreement as
19 provided in section 23.06 of this article.

20 2. Notwithstanding the provisions of subdivision one of this section,
21 a judge shall not be required to approve a sentencing agreement for
22 referral to a dedicated opioid rehabilitation facility, if, in his or
23 her discretion, the judge determines that such defendant is not a suit-
24 able candidate for admission to such facility because:

25 (a) the defendant is deemed to be a danger to himself or herself or to
26 other people;

27 (b) the defendant is deemed to be a high flight risk;

28 (c) the defendant suffers from substantial mental illness which is not
29 related to the defendant's opioid abuse or addiction, excluding mental
30 illness such as depression which may be related to the opioid use;

31 (d) the defendant's past history indicates that the defendant would
32 not successfully complete the facility program;

33 (e) of the nature and severity of the crime which with the defendant
34 is charged; or

35 (f) of such other reason as the judge, in his or her sole discretion
36 may determine.

37 3. (a) Prior relapse in an alternate drug court treatment program or a
38 private or public treatment program shall not be a prerequisite to
39 admission to a dedicated opioid rehabilitation facility.

40 (b) A defendant who has relapsed two or more times in an alternate
41 drug court treatment program shall be referred for admission to a dedi-
42 cated opioid rehabilitation facility or ordered to be incarcerated.

43 4. (a) An opioid addicted or opioid abusing defendant who has been
44 sentenced to incarceration in a correctional facility by a drug court
45 shall be eligible to petition the sentencing court for reconsideration
46 of sentencing and consideration for an order of the court directing
47 admission of the defendant to a dedicated opioid rehabilitation facility
48 in accordance with the provisions of this article, provided that:

49 (i) at least one year remains on such defendant's sentence of incar-
50 ceration; or

51 (ii) if less than one year remains on such defendant's sentence of
52 incarceration, such defendant agrees to remain at the dedicated opioid
53 rehabilitation facility for a period of not less than one year.

54 (b) The granting of a petition described in this subdivision shall be
55 in the sole discretion of the court.

1 5. Nothing in this article shall prohibit a sentencing judge from
2 sentencing a defendant to incarceration in lieu of admission to a dedi-
3 cated opioid rehabilitation facility.

4 § 23.06 Sentencing agreement.

5 1. Prior to the issuance of an order directing entry into treatment at
6 a dedicated opioid rehabilitation facility as provided in section 23.05
7 of this article, the defendant, the defendant's attorney and the
8 district attorney, or his or her designee, shall enter into a written
9 sentencing agreement as provided in this section and in section 216.05
10 of the criminal procedure law. Such agreement shall be incorporated into
11 the record and shall be approved by the court prior to the issuance of
12 an order; provided, however, that the court is not required to approve
13 any agreement which the sentencing judge finds deficient or inappropri-
14 ate given the circumstances of the case. A copy of such agreement shall
15 be provided to the defendant, to the defendant's attorney and to the
16 dedicated opioid rehabilitation facility the defendant is ordered to
17 attend.

18 2. In the case of a defendant who is a minor, such defendant's parent
19 or guardian shall also be required to consent to the agreement on behalf
20 of the minor unless the court determines that parental or guardian
21 involvement would have a detrimental effect on the course of treatment
22 of the minor or is not in the best interests of the minor. In the case
23 of a minor who is in the care and custody of the state, consent to the
24 agreement shall be obtained from the appropriate representative of the
25 department of social services or agency with which the minor was placed.

26 3. In addition to any requirements specified in section 216.05 of the
27 criminal procedure law, a sentencing agreement recommending diversion to
28 an opioid rehabilitation facility shall include the following
29 provisions:

30 (a) the defendant's agreement to reside at the facility for a period
31 of not less than one year nor more than two years, with the length of
32 time being determined by the rehabilitation progress the defendant
33 makes;

34 (b) the defendant's agreement to be physically incarcerated at the
35 facility in lieu of being incarcerated at a correctional facility;

36 (c) a statement by the defendant that he or she understands that the
37 determination of the defendant's readiness to leave the facility shall
38 be made by staff at the facility; and

39 (d) a statement by the defendant that the defendant understands and
40 agrees that if he or she does not comply with the treatment program at
41 the facility, any time spent at the facility shall not be credited
42 toward the defendant's sentence.

43 § 23.07 Minors.

44 1. In treating a minor at a dedicated opioid rehabilitation treatment
45 facility, the important role of the parents or guardians shall be recog-
46 nized. Steps shall be taken to involve the parents or guardians in the
47 course of treatment, unless in the judgment of a licensed health care
48 provider treating the minor, parental or guardian involvement would have
49 a detrimental effect on the course of treatment of the minor or is not
50 in the best interests of the minor.

51 2. Treatment of a minor may be provided to the minor by a licensed
52 health care provider operating through the facility, or a person operat-
53 ing under such health care provider's supervision, without the consent
54 or involvement of the minor's parent or guardian. In the case of the
55 treatment of a minor who is in the care and custody of the state, treat-
56 ment of a minor may be provided to the minor by a licensed health care

1 provider operating through the facility, or a person operating under
2 such health care provider's supervision, without the consent or involve-
3 ment of the department of social services or agency with which the minor
4 was placed.

5 § 23.08 Discharge from a dedicated opioid rehabilitation facility.

6 1. A defendant shall be discharged from a dedicated opioid rehabili-
7 tation facility upon the occurrence of the first of:

8 (a) a determination by the facility health care providers or by a
9 licensed health care provider designated by the sentencing drug court,
10 or by the opioid court if the defendant's case has been transferred to
11 an opioid court, that the defendant has made sufficient progress in his
12 or her rehabilitation to leave the facility program, provided that such
13 determination shall not be made until the defendant has completed at
14 least one year of successful treatment at the facility;

15 (b) the expiration of two years at the facility, regardless of whether
16 the defendant has successfully completed the facility rehabilitation
17 program;

18 (c) the defendant's refusal to cooperate with his or her facility
19 rehabilitation program requirements or to continue in the facility reha-
20 bilitation program;

21 (d) the defendant's medical or psychological inability to continue in
22 the facility rehabilitation program due to a medical or psychological
23 condition or event clinically unrelated to the defendant's opioid
24 addiction; or

25 (e) at the request of the facility to the court for removal of the
26 defendant from the facility.

27 2. A defendant who is discharged from the facility pursuant to para-
28 graph (a) of subdivision one of this section shall be referred by the
29 facility, upon approval by the sentencing court, to a halfway house and
30 support program pursuant to section 23.09 of this article.

31 3. A defendant who is discharged from the facility pursuant to para-
32 graph (b) of subdivision one of this section shall be re-sentenced by
33 the sentencing court, or by the nearest opioid court if such defendant's
34 case has been transferred to the opioid court, to serve the remaining
35 balance of such defendant's sentence at an alternative rehabilitation
36 program or at a correctional institution, in the court's discretion.
37 The facility health care provider or providers who treated the defendant
38 during the facility rehabilitation program shall provide the sentencing
39 court with a written report or reports detailing the defendant's
40 progress or lack of progress in the program. If, in the opinion of the
41 facility health care providers, the defendant has evidenced a desire to
42 overcome his or her addiction or abuse issues, and made substantive
43 progress toward doing so, the defendant shall receive credit toward time
44 served for his or her time at the dedicated opioid rehabilitation facil-
45 ity. If, in the opinion of the facility health care providers, the
46 defendant has not evidenced a desire to overcome his or her addiction or
47 abuse issues, or not made substantive progress toward doing so, the
48 defendant shall not receive credit toward time served for his or her
49 time at the dedicated opioid rehabilitation facility.

50 4. A defendant who is discharged from the facility pursuant to para-
51 graph (c) of subdivision one of this section shall be re-sentenced by
52 the sentencing court, or by the nearest opioid court if such defendant's
53 case has been transferred to the opioid court, to serve the remaining
54 balance of such defendant's sentence at a correctional institution. The
55 facility health care provider or providers who treated the defendant
56 during the facility rehabilitation program shall provide the court with

1 a written report or reports detailing the defendant's progress or lack
2 of progress in the program. If, in the opinion of the facility health
3 care providers, the defendant has not evidenced a desire to overcome his
4 or her addiction or abuse issues, or made substantive progress toward
5 doing so, the defendant shall not receive credit toward time served for
6 his or her time at the dedicated opioid rehabilitation facility. Such
7 defendant shall not be eligible for diversion to any other rehabili-
8 tation program in lieu of incarceration for a period of at least one
9 year; provided, however, that nothing in this subdivision shall prevent
10 a defendant from participating in a rehabilitation program while at the
11 correctional institution.

12 5. (a) A defendant who is discharged from a dedicated opioid rehabili-
13 tation facility pursuant to paragraph (d) of subdivision one of this
14 section shall be eligible to return to the opioid rehabilitation facili-
15 ty upon completion of any necessary medical or psychological treatment,
16 if the defendant is medically and psychologically capable of return to
17 the facility and continued participation in the facility's rehabili-
18 tation program. Such return to the facility, or alternative sentencing,
19 shall be in the discretion of the court, or the nearest opioid court if
20 such defendant's case has been transferred to the opioid court.

21 (b) The facility health care provider or providers who treated the
22 defendant during the facility rehabilitation program shall provide the
23 court with a written report or reports detailing the defendant's
24 progress or lack of progress in the program prior to the onset of the
25 defendant's inability to continue in the facility rehabilitation
26 program.

27 (i) If, in the opinion of the facility health care providers, the
28 defendant has evidenced a desire to overcome his or her addiction or
29 abuse issues, or has made substantive progress toward doing so, the
30 defendant shall be allowed to return to the dedicated opioid rehabili-
31 tation facility.

32 (ii) If, in the opinion of the facility health care providers, the
33 defendant has not evidenced a desire to overcome his or her addiction or
34 abuse issues or has not made substantive progress toward doing so, the
35 defendant shall not be allowed to return to the facility and shall not
36 receive credit toward time served for his or her time at the dedicated
37 opioid rehabilitation facility.

38 (c) If during the period of the defendant's treatment for the medical
39 or psychological condition that gave rise to the inability to continue
40 in the facility rehabilitation program, the provisions of paragraph (a)
41 or (b) of subdivision one of this section apply, the provisions of
42 subdivisions two or three of this section, as applicable, shall be
43 controlling.

44 6. A defendant who is discharged from the facility pursuant to para-
45 graph (e) of subdivision one of this section shall not be eligible to
46 return to the facility.

47 § 23.09 Treatment following discharge from a dedicated opioid rehabili-
48 tation facility.

49 1. A defendant who is discharged from a dedicated opioid rehabili-
50 tation facility pursuant to paragraph (a) of subdivision one of section
51 23.08 of this article shall be required by the court to reside at a
52 halfway house to reintegrate the defendant into society for a minimum
53 period of two months up to a maximum period of two years.

54 2. A defendant who is discharged from a dedicated opioid rehabili-
55 tation facility pursuant to paragraph (b) of subdivision one of section
56 23.08 of this article and subsequently sentenced to serve the remaining

1 balance of or a portion of such defendant's sentence at an alternative
2 rehabilitation program shall be required by the court to reside at a
3 halfway house to reintegrate the defendant into society for a minimum
4 period of two months up to a maximum period of two years following
5 successful completion of the alternative rehabilitation program.

6 3. In the discretion of the counselors at the halfway house, a defend-
7 ant may be required to attend one year of relapse prevention counseling
8 subsequent to leaving the halfway house.

9 4. (a) In the discretion of the sentencing court, or the nearest
10 opioid court if such defendant's case has been transferred to the opioid
11 court, a defendant who has been in compliance with the programs at the
12 dedicated opioid rehabilitation facility program and the halfway house
13 and with all alternative rehabilitation and support programs shall be
14 eligible for probation or other disposition of his or her case in
15 accordance with the provisions of subdivision ten of section 216.05 of
16 the criminal procedure law. Time served in the dedicated opioid rehabil-
17 itation facility program, the halfway house and other alternative reha-
18 bilitation and support programs shall be credited toward the time
19 remaining on the defendant's sentence.

20 (b) If a defendant relapses into opioid addiction or abuse while on
21 probation, the court may revoke the sentence of probation in accordance
22 with article four hundred ten of the criminal procedure law. In such
23 case, the defendant will lose credit for time served in the dedicated
24 opioid rehabilitation facility program, the halfway house and with all
25 alternative rehabilitation and support programs.

26 (c) Notwithstanding the provisions of paragraph (b) of this subdivi-
27 sion, a defendant who has been discharged from the halfway house and is
28 on probation may voluntarily seek additional treatment through the
29 court, including a return to the mandatory rehabilitation program or an
30 alternative rehabilitation or support program, or seek additional treat-
31 ment at a private or public facility, without loss of credit for time
32 served in the dedicated opioid rehabilitation facility program, the
33 halfway house and with all alternative rehabilitation and support
34 programs.

35 § 23.10 Court appearances.

36 1. While residing at a dedicated opioid rehabilitation facility, a
37 defendant shall attend requisite appearances before the sentencing
38 court, provided such court is located within thirty miles of the facili-
39 ty. Transportation to the court shall be provided by the department of
40 corrections. With the permission of the sentencing court, and in accord-
41 ance with guidelines promulgated by the chief administrator of the
42 court, the defendant may make an appearance at such hearing by electron-
43 ic means in lieu of in-person attendance.

44 2. If the sentencing drug court is located more than thirty miles from
45 the dedicated opioid rehabilitation facility, the sentencing court shall
46 transfer the defendant's case to the nearest opioid court, in accordance
47 with guidelines promulgated by the chief administrator of the court.

48 § 23.11 Records.

49 1. After the admission of any defendant, the director of a dedicated
50 opioid rehabilitation facility shall, within five days excluding Sunday
51 and holidays, forward to the office such information from the record in
52 such time and manner as the commissioner shall require by regulation.
53 Such information from the record in the office shall be accessible only
54 in the manner set forth in sections 33.13 and 33.16 of this chapter.

55 2. All records of identity, diagnosis, prognosis, or treatment in
56 connection with a person's receipt of chemical dependence services shall

1 be confidential and shall be released only in accordance with applicable
2 provisions of the public health law, any other state law, federal law
3 and duly executed court orders.

4 § 23.12 Limitations.

5 1. A defendant shall not be eligible for referral to a dedicated
6 opioid rehabilitation facility more than two times, regardless of wheth-
7 er the defendant completes the program offered by the facility. Notwith-
8 standing the foregoing, if a defendant is unable to complete the course
9 of treatment at a dedicated opioid rehabilitation facility due to a
10 medical or psychological condition or event clinically unrelated to the
11 defendant's opioid addiction, in the discretion of the sentencing court,
12 or the opioid court if the defendant's case has been transferred to the
13 opioid court, the defendant shall be eligible to return to the dedicated
14 opioid rehabilitation facility upon completion of any necessary medical
15 or psychological treatment, in accordance with subdivision five of
16 section 23.08 of this article.

17 2. Referral to a dedicated opioid rehabilitation facility shall only
18 be made in the case of a defendant whose primary addiction is to
19 opioids. A defendant who is not addicted to opioids does not qualify for
20 referral to a dedicated opioid rehabilitation facility, regardless of
21 any other addictions or abuse issues the defendant has.

22 § 23.13 Study.

23 Five years after the dedicated opioid rehabilitation facility
24 commences operations, the commissioner shall provide the governor, the
25 temporary president of the senate, the speaker of the assembly and the
26 minority leaders of the senate and the assembly with a report evaluating
27 whether the facility programs have resulted in a reduction of opioid use
28 in the general population, the effect of treatment in helping reduce
29 recidivism and whether there has been a cost savings to the state
30 through treatment through the facility in lieu of incarceration, togeth-
31 er with such other matters as the commissioner deems relevant.

32 § 4. The opening paragraph of subdivision (b) of section 33.08 of the
33 mental hygiene law, as added by chapter 709 of the laws of 1986, is
34 amended to read as follows:

35 Any inpatient of a hospital operated by the office of mental health, a
36 dedicated opioid rehabilitation facility or a state operated alcoholism
37 facility shall be entitled to receive a monthly state payment for
38 personal needs for each full calendar month commencing on or after the
39 effective date of this section, in which the patient is in such hospital
40 or alcoholism facility, if such patient also:

41 § 5. Subdivision (f) of section 19.17 of the mental hygiene law, as
42 amended by section 1 of part K of chapter 58 of the laws of 2009, is
43 amended to read as follows:

44 (f) There shall be in the office the facilities named below for the
45 care, treatment and rehabilitation of the mentally disabled and for
46 clinical research and teaching in the science and skills required for
47 the care, treatment and rehabilitation of such mentally disabled.

48 R.E. Blaisdell Addiction Treatment Center

49 Bronx Addiction Treatment Center

50 C.K. Post Addiction Treatment Center

51 Creedmoor Addiction Treatment Center

52 Dick Van Dyke Addiction Treatment Center

53 Kingsboro Addiction Treatment Center

54 McPike Addiction Treatment Center

55 Richard C. Ward Addiction Treatment Center

56 J.L. Norris Addiction Treatment Center

1 South Beach Addiction Treatment Center
2 St. Lawrence Addiction Treatment Center
3 Stutzman Addiction Treatment Center

4 A dedicated opioid rehabilitation facility established pursuant to
5 article twenty-three of this title

6 § 6. Subdivisions 4, 5, 6, 7 and 8 of section 216.05 of the criminal
7 procedure law, subdivisions 4, 6 and 7 as added by section 4 of part AAA
8 of chapter 56 of the laws of 2009, subdivision 5 as amended by chapter
9 67 of the laws of 2016 and subdivision 8 as amended by chapter 315 of
10 the laws of 2016, are amended to read as follows:

11 4. When an authorized court determines, pursuant to paragraph (b) of
12 subdivision three of this section, that an eligible defendant should be
13 offered alcohol or substance abuse treatment, or when the parties and
14 the court agree to an eligible defendant's participation in alcohol or
15 substance abuse treatment, an eligible defendant may be allowed to
16 participate in the judicial diversion program offered by this article.
17 Prior to the court's issuing an order granting judicial diversion, the
18 eligible defendant shall be required to enter a plea of guilty to the
19 charge or charges; provided, however, that no such guilty plea shall be
20 required when:

21 (a) the people and the court consent to the entry of such an order
22 without a plea of guilty; or

23 (b) based on a finding of exceptional circumstances, the court deter-
24 mines that a plea of guilty shall not be required. For purposes of this
25 subdivision, exceptional circumstances exist when, regardless of the
26 ultimate disposition of the case, the entry of a plea of guilty is like-
27 ly to result in severe collateral consequences; or

28 (c) the defendant is ordered to enter a dedicated opioid rehabili-
29 tation program pursuant to article twenty-three of the mental hygiene
30 law.

31 5. The defendant shall agree on the record or in writing to abide by
32 the release conditions set by the court, which, shall include: partic-
33 ipation in a specified period of alcohol or substance abuse treatment at
34 a specified program or programs identified by the court, which may
35 include periods of detoxification, residential or outpatient treatment,
36 or both, as determined after taking into account the views of the health
37 care professional who conducted the alcohol and substance abuse evalu-
38 ation and any health care professionals responsible for providing such
39 treatment or monitoring the defendant's progress in such treatment; and
40 may include: (i) periodic court appearances, which may include periodic
41 urinalysis; (ii) a requirement that the defendant refrain from engaging
42 in criminal behaviors; (iii) if the defendant needs treatment for opioid
43 abuse or dependence, that he or she may participate in and receive
44 medically prescribed drug treatments under the care of a health care
45 professional licensed or certified under title eight of the education
46 law, acting within his or her lawful scope of practice, provided that no
47 court shall require the use of any specified type or brand of drug
48 during the course of medically prescribed drug treatments; and (iv) if a
49 defendant in a case brought in an opioid court needs treatment for
50 opioid abuse or dependence, that he or she may be referred to a dedi-
51 cated opioid rehabilitation facility in accordance with the provisions
52 of article twenty-three of the mental hygiene law.

53 6. (a) Upon an eligible defendant's agreement to abide by the condi-
54 tions set by the court, the court shall issue a securing order providing
55 for bail or release on the defendant's own recognizance and conditioning
56 any release upon the agreed upon conditions. The period of alcohol or

1 substance abuse treatment shall begin as specified by the court and as
2 soon as practicable after the defendant's release, taking into account
3 the availability of treatment, so as to facilitate early intervention
4 with respect to the defendant's abuse or condition and the effectiveness
5 of the treatment program. In the event that a treatment program is not
6 immediately available or becomes unavailable during the course of the
7 defendant's participation in the judicial diversion program, the court
8 may release the defendant pursuant to the securing order.

9 (b) Upon the agreement of an eligible defendant in a case brought in
10 an opioid court to abide by the conditions set by the court, the court
11 shall issue an order directing the commitment of such defendant to a
12 dedicated opioid rehabilitation facility in accordance with the
13 provisions of article twenty-three of the mental hygiene law.

14 7. (a) When participating in judicial diversion treatment pursuant to
15 this article, any resident of this state who is covered under a private
16 health insurance policy or contract issued for delivery in this state
17 pursuant to article thirty-two, forty-three or forty-seven of the insur-
18 ance law or article forty-four of the public health law, or who is
19 covered by a self-funded plan which provides coverage for the diagnosis
20 and treatment of chemical abuse and chemical dependence however defined
21 in such policy; shall first seek reimbursement for such treatment in
22 accordance with the provisions of such policy or contract.

23 (b) In the case of a defendant ordered to enter a dedicated opioid
24 rehabilitation facility in accordance with the provisions of article
25 twenty-three of the mental hygiene law, who is covered under a private
26 health insurance policy or contract issued for delivery in this state
27 pursuant to article thirty-two, forty-three or forty-seven of the insur-
28 ance law or article forty-four of the public health law, or who is
29 covered by a self-funded plan which provides coverage for the diagnosis
30 and treatment of chemical abuse and chemical dependence however defined
31 in such policy, such defendant shall first seek reimbursement for such
32 treatment in accordance with the provisions of such policy or contract
33 at the time of admission to the dedicated opioid rehabilitation center
34 and again upon discharge from such facility and resumption of treatment
35 through any alternative in-patient or outpatient program.

36 8. During the period of a defendant's participation in the judicial
37 diversion program, the court shall retain jurisdiction of the defendant,
38 provided, however, that, unless the defendant has been ordered to enter
39 a dedicated opioid rehabilitation facility in accordance with the
40 provisions of article twenty-three of the mental hygiene law, the court
41 may allow such defendant to (i) reside in another jurisdiction, or (ii)
42 participate in alcohol and substance abuse treatment and other programs
43 in the jurisdiction where the defendant resides or in any other juris-
44 diction, while participating in a judicial diversion program under
45 conditions set by the court and agreed to by the defendant pursuant to
46 subdivisions five and six of this section. The court may require the
47 defendant to appear in court at any time to enable the court to monitor
48 the defendant's progress in alcohol or substance abuse treatment. The
49 court shall provide notice, reasonable under the circumstances, to the
50 people, the treatment provider, the defendant and the defendant's coun-
51 sel whenever it orders or otherwise requires the appearance of the
52 defendant in court. Failure to appear as required without reasonable
53 cause therefor shall constitute a violation of the conditions of the
54 court's agreement with the defendant.

55 § 7. Section 5 of the correction law is amended by adding a new subdi-
56 vision 7 to read as follows:

1 7. The commissioner shall consult with the commissioner of addiction
2 services and supports with respect to establishing a dedicated opioid
3 rehabilitation facility for the purpose of providing long-term residen-
4 tial treatment of defendants referred to such facility from the Buffalo
5 Opioid Intervention Court and the Bronx Opioid Avoidance and Recovery
6 Court, as provided in article twenty-three of the mental hygiene law,
7 and shall enter into agreements with the commissioner of addiction
8 services and supports for the provision of security services at such
9 facility or facilities.

10 § 8. This act shall take effect on January 1, 2021. Effective imme-
11 diately, the addition, amendment, and/or repeal of any rule or regu-
12 lation necessary for the implementation of this act on its effective
13 date are authorized to be made and completed on or before such effective
14 date.